

**Toering Electric Company and Foster Electric, Inc.
and Local Union No. 275, International Brotherhood
of Electrical Workers, AFL-CIO.** Cases
7-CA-37768, 7-CA-39093, and 7-CA-39205

June 30, 2008

**ORDER DENYING SECOND MOTION FOR
RECONSIDERATION¹**

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

On September 29, 2007, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding,² in which it held that an applicant for employment entitled to the National Labor Relations Act's 8(a)(3) protections against hiring discrimination is "someone genuinely interested in seeking to establish an employment relationship with the employer." *Id.*, slip op. at 4. The Board further held that the General Counsel must establish the applicant's genuine interest in employment as part of his *prima facie* case under *FES*, 331 NLRB 9 (2000), *enfd.* 301 F.3d 83 (3d Cir. 2002). The Board remanded the case to the administrative law judge for further factual development and consideration consistent with the decision.

On December 3, 2007, International Brotherhood of Electrical Workers, AFL-CIO, Local 275 (the Charging

Party) filed a Motion for Reconsideration of the Board's decision, contending that the Board should reconsider its decision both for the reasons set forth in the *Toering Electric Co.* dissent, which the Charging Party adopted, and for other reasons as well. On March 7, 2008, the Board denied the Charging Party's Motion for Reconsideration.

On April 7, 2008, the Charging Party filed a second Motion for Reconsideration. In the motion, the Charging Party reasserted arguments made in the first motion and, relying on *Wal-Mart Stores, Inc.*, 351 NLRB 131 (2007), asserted the new argument that the Board committed a material error by failing to specifically address in the order denying the first motion whether retroactive application of *Toering Electric Co.* would result in a "manifest injustice" to the Charging Party. On May 6, 2008, the Respondent filed a response to the Charging Party's second Motion for Reconsideration.

Having duly considered the Charging Party's arguments, we find that it has failed to present any "extraordinary circumstances" warranting reconsideration.³ We thus deny the Charging Party's motion as lacking merit.⁴

ORDER

The Charging Party's motion for reconsideration is denied.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

² 351 NLRB 226.

³ Sec. 102.48(d)(1), NLRB Rules and Regulations.

⁴ We also deny, as lacking merit, the Respondent's request for an award of attorney's fees against the Charging Party. See *Pacific Grove Convalescent Hospital*, 350 NLRB 518 fn. 4 (2007).

Member Liebman adheres to her dissenting position set forth in *Toering Electric Co.* She agrees, however, that the Charging Party has established no basis under the Board's Rules for granting the motion for reconsideration.